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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 83/2017

MANISH JAIN

..... Petitioner

Through: Mr. Sanjay Garg, Adv.

Versus

RAJESH GOYAL

..... Respondent

Through: Mr. Manoj Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.07.2017

CM No.12741/2017 (for condonation of 57 days delay in filing)

1. For the reasons stated, the delay of 57 days in filing the petition is condoned.
2. The application is disposed of.
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3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 22nd September, 2016 in CS No.636/2014 of the Court of Additional District Judge (ADJ)-03 (North-West), Rohini Courts, Delhi) of only partly allowing the application filed by the petitioner/plaintiff under Order XII Rule 6 of CPC.
4. The petition was entertained and notice thereof issued.
5. The counsel for the respondent appears.
6. The counsels have been heard.

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7. The petitioner/plaintiff instituted the suit from which this petition arises, for specific performance of an agreement of sale of immovable property, for possession and permanent injunction and in the alternative for recovery of Rs.9,06,000/- with interest.

8. The counsel for the petitioner/plaintiff informs that the petitioner/plaintiff has since dropped the relief of specific performance and now the suit remains only for recovery of Rs.9,06,000/-.

9. The petitioner/plaintiff filed the application under Order XII Rule 6 of CPC for a decree for recovery of Rs.5,50,000/- paid by the petitioner/plaintiff to the respondent/defendant under the agreement to sell along with interest thereon, contending that the petitioner/plaintiff in para 7 of the plaint had categorically pleaded payment of Rs.5,50,000/- against receipt and the respondent/defendant had not denied his signatures on the receipt.

10. Para 7 of the plaint and para 7 of the reply on merits in the written statement are reproduced herein below:

"7. That though the plaintiff was not willing to pay any amount but after much insistence and pursuance of the defendant, the plaintiff paid only Rs.5.50 Lac to the defendant on the same day i.e. 11.01.2013 against receipt. At the same time, the plaintiff made it clear to the defendant that he will pay Rs.2.50 Lac only after seeing no objection certificate. At this, the defendant asked the plaintiff to pay Rs.2.50 Lac along with remaining sale consideration at the time of execution of documents and told that he would obtain no objection certificate by that time i.e. 18.04.2013.

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7. That the contents of the para No.7 of the plaint are wrong and denied except to those which are matter of record. Anything contrary to the matter of record is denied in toto. It is wrong and denied that though the Plaintiff was not willing to pay any amount but after much insistence and pursuance of the Defendant, the Plaintiff paid only Rs.5,50,000/- to the Defendant on the same day i.e. 11.01.2013 against receipt. It is further wrong and denied that at the same time, the Plaintiff made it clear to the Defendant that he will pay Rs.2,50,000/- only after seeking no objection certificate. It is further wrong and denied that at this, the Defendant asked the Plaintiff to pay Rs.2.50,000/- along with remaining sale consideration at the time of execution of documents and told that he would obtain no objection certificate by that time i.e. 18.04.2013. The contents of the preliminary objections may kindly be read as part and parcel of this para as the same are not reproduced herein for the sake of brevity."

11. The counsel for the petitioner/plaintiff has contended that the denial by the respondent/defendant of the contents of para 7 of the plaint is by adopting the language of the plaint and it is nowhere pleaded that the signatures on the receipt pleaded in para 7 of the plaint are not of the respondent/defendant. Attention is also invited to the receipt at page 22 of the paper book and which is found to be in hand and purportedly signed by 'Rajesh Goyal'.

12. The learned ADJ on the basis of admission of the respondent/defendant in para 6 of the preliminary objection as under:

"6. That the present suit of the Plaintiff is liable to be dismissed in view of the various judicial precedents pronounced by the Hon'ble Apex Court whereby, it has been laid down that a suit for damages would be maintained instead of suit for specific performance wherein the agreement to sell elucidates

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the compensation in terms of money to be payable to either of the parties. It is submitted that in the present case the alleged agreement to sell dated 18.12.2012 is not within the four corners of law to be termed as an agreement to sell and hence the present suit for its specific performance is also otherwise not maintainable. It is submitted that the Plaintiff has filed a false and a frivolous suit wherein the Plaintiff has concocted the true and actual facts so as to suit his false and belated interest. It is submitted that the Plaintiff paid only an amount of Rs.1,00,000/- to the answering defendant in respect of the suit property as earnest money and did not paid any further amount/part payment towards its sale consideration. It is further submitted that the Plaintiff never came forward so as to get the necessary title documents pertaining to the suit executed in his favour because of recession crept in the market and is now making false and sham pleas. It is further submitted that the Plaintiff was required to pay Rs.8,00,000/- by and before 31.12.2012 which was defaulted by him and further failed to pay up the remaining sale consideration so that the documents thereof could have been executed in his favour."

has disposed of the application by passing a decree on admission for recovery of Rs.1,00,000/- only and denying the decree for Rs.5.50,000/- as sought.

13. The argument of the counsel for the petitioner/plaintiff before this Court also remains the same.

14. I have enquired the stage of the suit i.e. whether admission/denial have taken place.

15. The counsel for the petitioner/plaintiff states that the suit is at the stage of filing of replication and the stage of admission/denial has not reached as yet.

16. I have enquired from the counsel for the respondent/defendant, whether the respondent/defendant is present in the Court.

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17. The answer is in the negative.

18. I have further enquired from the counsel for the respondent/defendant, whether the signature on the receipt, copy whereof is at page 22 of the paper book, is of the respondent/defendant.

19. The counsel for the respondent/defendant states that he has instructions to deny the said signatures.

20. In the aforesaid state of affairs, I am unable to draw any inference different from that drawn by the learned ADJ.

21. According to the counsel for the petitioner/plaintiff also, there is no admission of receipt of Rs.5,50,000/-, though according to him there is evasive denial / no specific denial of the signature on the receipt.

22. However, the same does not entitle the petitioner / plaintiff to a decree on admissions.

23. Dismissed.

JULY 25, 2017

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RAJIV SAHAI ENDLAW, J.